

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE SECOND DAY OF APRIL, 1987

Present : Hon'ble Shri Ch.Ramakrishna Rao Member(J)

Hon'ble Shri L.H.A.Rego Member(A)

APPLICATION No.1754/86(F)

P.Narasaiah,
Line Inspector,
Tele-Communication,
Sub-Division Office,
Davangere,
Chitradurga District.

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APPLICANT

(Shri M.R.Achar

... Advocate)

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Sub-Divisional Officer,
Telegraphs, Davangere,
Chitradurga District.

Telecom District Engineer,
Davangere, Chitradurga Dist.

General Manager,
Telecommunication,
Bangalore.

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RESPONDENTS

(Shri M.S.Padmarajaiah

... Advocate)

This application has come up before the Court today.

Hon'ble Shri L.H.A.Rego, Member(AM) made the following :

O R D E R

In this application filed under Sec.19 of the Administrative Tribunals Act, 1985 the applicant prays, that the impugned telegraphic communication dated 30.8.1986(Annexure-C), by respondent(R)2, to the applicant, conveying to him, that his request for withdrawal of the notice regarding voluntary retirement, is not accepted by the Director, Telecom, Bangalore (Director for short); that the Director has approved his retirement from the forenoon of 1.9.1986, be set aside and that he be granted consequential relief.

2. The background to this application is briefly as follows :

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The applicant entered service in the establishment of the Telecom District Engineer, Davangere, Chitradurga District(i.e R2) on 23.9.1953. At the material time, he was working as a Line Inspector in the Telecommunications Department under R2. In the interest of public service, he was transferred on 20.5.1986 by R3, to Bellary Division, which was conveyed to him by R2, under his communication dated 27.5.1986. On that very date, he submitted a notice of voluntary retirement (Annexure-A) to R3, indicating his desire to retire voluntarily, w.e.f.31.2.1986, on grounds of health and requesting for early acceptance of his voluntary retirement. He had also attributed therein, an additional reason for his voluntary retirement, namely, his transfer to Sindhanur in Raichur District, which did not suit him.

3. This notice of voluntary retirement was forwarded by R3, to the competent authority, namely the Director, for necessary action. When the matter was under the consideration of the Director, the applicant submitted a representation on 30.6.1986(Annexure-B) to R3, seeking permission to withdraw his notice dated 27.5.1986(Annexure-A) for voluntary retirement, for various reasons mentioned therein. This representation was forwarded to the Director through R2, on 2.8.1986, for appropriate action.

4. The Director considered both the notices (Annexures A and B) in the light of the provisions in Rule 48-A(4) of the CCS(Pension) Rules, 1972 (Rules for short), and decided to accept the notice of voluntary retirement, given by the applicant on 27.5.1986(Annexure-A). The decision was conveyed to the applicant through R2, by a telegram dated 30.8.1986(Annexure-C) and consequently the applicant has been deemed to have been retired from service w.e.f. 1.9.1986 forenoon.

5. Aggrieved, the applicant has approached this Tribunal for

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redress. Learned Counsel for the applicant, Shri N.Y.Hanumanthappa, contended, that according to Rule 48-A(2) of the Rules, if the appointing authority does not decline permission for voluntary retirement before expiry of the period of 3 months specified in the notice, the said retirement is deemed to have been accepted; that as the notice dated 27.5.1986(Annexure-A) from the applicant, was not considered by the respondents, the applicant submitted a representation on 30.6.1986(Annexure-B) to R3, requesting for cancellation of his order of transfer from Davangere to Sindhanur and for permission to withdraw his notice dated 27.5.1986(Annexure-A), regarding voluntary retirement; that according to Rule 48A(2) of the Rules, the appointing authority alone, can accept or reject the notice of voluntary retirement but in his case, no such decision was communicated to the applicant directly by the appointing authority; that as he had submitted his representation on 30.6.1986(Annexure-B) i.e., within the period of 90 days, requesting for withdrawal of his notice for voluntary retirement, the same should have been considered favourably (the applicant has also referred to the representation submitted by him to R3 in this behalf, but it bears no date vide Annexure B-1) ; that as the respondents failed to do so, the impugned communication dated 30.8.1986(Annexure-C), relating to decline of his request for withdrawal of the notice of voluntary retirement and approval by the Director, of his retirement accordingly w.e.f.1.9.1986 forenoon, is bad in law.

6. Shri Hanumanthappa relied on two decisions of the Supreme Court, to buttress the validity of the claim of the applicant to withdraw his notice of voluntary retirement, prior to its acceptance by the competent authority. The first is N.K.TAGNANI v. BIHAR STATE ELECTRICITY BOARD 1975(1)SLR 598(604), where an employee in the service of Bihar Electricity Board, tendered his resignation with

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the request that it should be accepted before 29th November, 1972 and having received no reply for a long time, he by his letter, dated 2nd August, 1973 withdrew his resignation and reported himself for duty on the same date, but by a resolution he was intimated on 9th May, 1974 that his resignation had been accepted w.e.f. 31st December 1972. It was urged that the resolution accepting his resignation, after he had intimated withdrawal of the same was invalid, and must be struck off. It was held that since the application for withdrawal had been sent prior to the acceptance of the resignation, the impugned resolution must be quashed. The second is, UNION OF INDIA v. GOPAL CHANDRA MISRA & ORS AIR 1978 SC 694, in which it was observed :

" In the absence of a legal, contractual or constitutional bar, a "prospective" resignation can be withdrawn at any time before it becomes effective, and it becomes effective when it operates to terminate the employment or the office tenure of the resignor-This is the general principle equally applicable to Government servants and constitutional functionaries like High Court Judges. In the case of a Judge of a High Court, who is a constitutional functionary and under proviso(a) to Article 217(1) has a unilateral right or privilege to resign his office, his resignation becomes effective and tenure terminates on the date from which he, of his own volition, chooses to quit office. If in terms of the writing under his hand addressed to President he resigns in praesenti, the resignation terminates his office-tenure forthwith, and cannot, therefore, be withdrawn or revoked thereafter. But, if he by such writing chooses to resign from a future date, the act of resigning office is not complete because it does not terminate his tenure before such date and the Judge can, any time before the arrival of that prospective date on which it was intended to be effective, withdraw it, because the Constitution does not bar such withdrawal."

7. Shri Padmarajaiah, learned Central Government Standing Counsel for the respondents, in rebutting the contentions of the Counsel for the applicant, laid stress particularly on sub-rule(4) of Rule 48-A of the Rules. According to him this rule, precludes a Government servant, from withdrawing his notice of voluntary retirement, except with the specific approval of the appointing authority. (emphasis supplied) He asserted, that the applicant cannot as a

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matter of right, claim withdrawal of this notice, even though it was withdrawn, prior to the expiry of the stipulated period of 3 months and was not accepted earlier, by the appointing authority. Shri Padmarajaiah submitted, that in the two Supreme Court rulings relied upon by the Counsel for the applicant - vide para-6 supra - the cases cited therein were not pari materia with the instant case. Moreover, he stated, that these rulings need to be read in the context of the explicit provision of sub-rule(4) of Rule 48 of the Rules, which required specific prior approval (emphasis supplied), of the appointing authority, for withdrawal of the notice of voluntary retirement by the applicant. Shri Padmarajaiah, therefore, contended, that the dicta of the Supreme Court in the above two cases, had no bearing on the case before us, and that the applicant can derive no support therefrom.

8. It is pertinent to reproduce here the entire Rule 48-A ibid:

" Rule 48-A.

48-A. Retirement on completion of 20 years' qualifying Service

1) At any time after a Government servant has completed twenty years' qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service.

2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority :

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

3) Deleted.

3A)(a) A Government servant referred to in sub-rule(1) may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than three months giving reasons therefor;

b) On receipt of a request under clause (a), the appointing authority subject to the provisions of sub-rule(2), may consider such request for the curtailment of the

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period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the Government servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

4) A Government servant, who has elected to retire under this rule and has given the necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority :

Provided that the request for withdrawal shall be made before the intended date of his retirement.

5) The pension and death-cum-retirement gratuity of the Government servant retiring under this rule shall be based on the emoluments as defined under Rules 33 and 34 and the increase not exceeding five years in his qualifying service shall not entitle him to any notional fixation of pay for purposes of calculating pension and gratuity.

6) This Rule shall not apply to a Government servant who-

a) retires under Rule 29, or

b) retires from Government service for being absorbed permanently in an autonomous body or a public sector undertaking to which he is on deputation at the time of seeking voluntary retirement.

EXPLANATION: For the purpose of this rule the expression "appointing authority" shall mean the authority which is competent to make appointments to the service or post from which the Government servant seeks voluntary retirement."

9. Rule 48A(2) clearly stipulates as a proviso, that where the appointing authority, does not refuse to grant permission for voluntary retirement, before expiry of the period specified in the notice, the retirement shall become effective, from the date of expiry of the said period. In this case, the applicant submitted the notice of voluntary retirement on 27.5.1986 (Annexure-A), and he sought to withdraw it on 30.6.1986 (Annexure-B). The period of 3 months from the date of the notice at Annexure-A, would have expired on 26.8.1986, while the decision to accept the notice of voluntary retirement of the applicant, was conveyed to him, through R2, by a telegram dated 30.8.1986 (Annexure-C). Rule 48A(2) clearly states, that where the appointing authority does not refuse to grant the permission for retirement, before the expiry of the period specified in the aforementioned notice, the retirement shall become effective from the date of expiry of the said period. In the present case, the competent authority conveyed

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to the applicant, through R2, by telegram dated 30.8.1986, acceptance of his notice of voluntary retirement and permitted the applicant to retire from service, w.e.f.1.9.1986 F.N by virtue of which, the applicant stood retired from that date.

10. Rule 48 A(4) of the Rules, vests in the appointing authority discretion in according approval or not, to the notice of withdrawal of voluntary retirement, submitted by the applicant on 30.6.1986 (Annexure-B), after taking into account the circumstances of the case. Shri Padmarajaiah submitted, that the reasons stated by the applicant at the time of seeking voluntary retirement by his notice dated 27.5.86 (Annexure-A) and those advanced by him later on 30.6.1986 (Annexure-B) when he sought to withdraw that notice, barely within a period of one month, were neither cogent nor consistent. In the notice of voluntary retirement, indicating his desire to retire w.e.f.31.8.1986 (Annexure-A), the reasons advanced by the applicant, were, his unsound health and his transfer to Sidhanur in Raichur District not being suitable to him. Some of the reasons stated by him (Annexures B and B1) while withdrawing that notice, seem discrepant and extraneous, such as work not having been properly assigned to him in his sub-division, harassment by the Departmental Officers etc. The appointing authority is seen to have duly taken into account this aspect, as well as other relevant factors, while accepting the notice of voluntary retirement served by the applicant and he was well within his right, in exercising his discretion to do so, in accordance with Rule 48A(4) ibid.


11. Shri Hanumanthappa next contended, that the notice of voluntary retirement was accepted by R-3, who was not competent to do so, as he was not the appointing authority and therefore the impugned communication dated 30.8.1986 (Annexure-C) was illegal, having no authority of law. Shri Padmarajaiah countered this contention, stating that the decision of accepting the notice of voluntary retirement, was actually taken by the Director, who was the appointing authority and the same was conveyed to the applicant, through R2, as directed by the

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the former. Shri Padmarajaiah showed us the relevant file to help ascertain the veracity of his statement. We saw this file and are satisfied, that the decision to accept the notice of voluntary retirement was taken by the Director, who was the appointing authority. The contention of Shri Hanumanthappa therefore, that this decision was taken by an officer, other than the appointing authority and that the same was therefore illegal, falls to the ground and we therefore negative the same. We also uphold, that the appointing authority had full authority and discretion in terms of Rule 48A(4), in the circumstances of the case, whether to approve or not, withdrawal of the notice of voluntary retirement, given by the applicant.

12. We have examined carefully the dicta of the Supreme Court cited by Shri Hanumanthappa in the two cases in question - vide para 6, supra. We agree with Shri Padmarajaiah, that the said cases are distinguishable from the case before us, particularly in the context of Rule 48A(4) ibid and of extraneous reasons advanced by the applicant to withdraw the notice of voluntary retirement and therefore, we are of the view that the applicant can derive no support therefrom.

13. In the light of the foregoing, we find there is no merit in the application and we therefore, ^{do} dismiss the same but in the circumstances of the case, we direct the parties to bear their own costs.


MEMBER(J)

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